

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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**FILE:** B-216464

**DATE:** February 6, 1985

**MATTER OF:** U.S. Polycon Corp./Sigma Piping  
Co., Inc.

**DIGEST:**

Solicitation which specifies metallic pipe for an underground steam distribution system, thereby excluding offer of nonmetallic systems, is unduly restrictive, where the contracting agency contends only that it does not require a nonmetallic system, but neither alleges nor shows that a non-metallic system is not satisfactory for the intended purpose or that a metallic system otherwise is necessary.

U.S. Polycon Corp./Sigma Piping Co., Inc. (Polycon/Sigma), a joint venture, protests award of a contract under invitation for bids (IFB) No. 125-3K15-84, issued by the Department of Agriculture (Agriculture) to upgrade the steam distribution system in Area 3 at the Beltsville Agricultural Research Center, Beltsville, Maryland. Polycon/Sigma alleges that the specifications are unduly restrictive.

We sustain the protest.

Polycon/Sigma alleges that the specifications require metallic pipe, thereby excluding the nonmetallic federal-agency-approved "Class A" piping manufactured and offered by Polycon/Sigma. Agriculture states that the "Class A" system pertains to piping suitable for nuclear facilities and asserts that, since it has no such facilities, it does not require such piping.

We recently sustained a bid protest by U.S. Polycon Corp. on the same issue, in connection with Agriculture's solicitation of bids (IFB No. 147-3K15-85) to install steam lines to a building at the Research Center. U.S. Polycon Corp., B-216185, Dec. 27, 1984, 84-2 C.P.D. ¶ \_\_\_\_\_. As we stated in that decision, where a solicitation requirement is challenged as unduly restrictive of competition, it is incumbent upon the agency to establish prima facie support

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for the restriction. PhilCon Corp.--Reconsideration, B-206641.2, et al., Dec. 30, 1983, 84-1 C.P.D. ¶ 42. Agriculture contended there as it contends here: that since the Research Center does not have nuclear facilities, it does not require the nonmetallic system. We pointed out, however, that the protester's challenge to the specifications is not that the specifications should require the protester's system, but that the specifications improperly exclude such a system from consideration. We sustained the protest because Agriculture had not suggested that a non-metallic steam distribution system would not be satisfactory for the Research Center's purpose and, indeed, we had no reason to believe that a system suitable for nuclear facilities is unsuitable for presumably less demanding applications.

Here, again, Agriculture does not argue that a nonmetallic system is unacceptable or that there are any other considerations that mandate the use of metallic conduit. We therefore must conclude that the IFB unduly restricted competition. See also PittCon Preinsulated Pipes Corp., B-209157, June 28, 1983, 83-2 C.P.D. ¶ 30.

Agriculture awarded the contract to another firm while the protest was pending. By letter of today to the Secretary of Agriculture, we are recommending that the agency determine whether a nonmetallic system in fact would meet its needs. We are further recommending that if such a system is found acceptable and if feasible at this time, the contract be terminated for convenience and the requirement resolicited with appropriately revised specifications.

This decision contains a recommendation for corrective action to be taken. Therefore, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720 (1982), which requires the submission of written statements by the agency to the committees concerning the action taken with respect to our recommendation.

The protest is sustained.

*Milton J. Jostlar*  
for Comptroller General  
of the United States